

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

C.C., as assignee, C.L.C., as assignee, S.C., as
assignee, G.F., as assignee, C.H., as assignee,
Laura Kim, as assignee and guardian for R.K.,
as assignee, C.C.M., as assignee, D.A.M., as
assignee, R.N., as assignee, J.R., as assignee,
B.A.T., as assignee, B.L.T., as assignee, S.W.,
as assignee, M.A., as assignee, J.B., as assignee,
J.W., as assignee, D.Q.M., as assignee, Brian
Frazier, as assignee and guardian for K.F., J.H.,
as assignee, and A.L., as assignee,

Plaintiffs,

v.

UNITED STATES FIDELITY & GUARANTY
COMPANY; GRANITE STATE INSURANCE
COMPANY; INSURANCE COMPANY OF
NORTH AMERICA; FEDERAL INSURANCE
COMPANY; TRANSAMERICA INSURANCE
COMPANY; WESTPORT INSURANCE
CORPORATION; and FIREMAN'S FUND
INSURANCE COMPANY,

Defendants.

CASE NO. 3:24-cv-05535-TMC

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or

1 private information for which special protection may be warranted. Accordingly, the parties hereby
2 stipulate to and petition the Court to enter the following Stipulated Protective Order (“Order”).
3 The parties acknowledge that this Order is consistent with LCR 26(c). It does not confer blanket
4 protection on all disclosures or responses to discovery, the protection it affords from public
5 disclosure and use extends only to the limited information or items that are entitled to confidential
6 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
7 confidential information under seal. The parties further acknowledge that this Order does not
8 constitute or effect a waiver of any party’s right to object to discovery requests or the
9 discoverability of information or documents sought in this matter.

10 2. “CONFIDENTIAL MATERIAL”

11 “Confidential Material,” for purposes of this Order, shall include the following documents
12 and tangible things produced or otherwise exchanged: discovery material that is not in the public
13 domain and that contains or relates to confidential settlement agreements and negotiations in
14 connection therewith; confidential information related to or belonging to non-parties, including
15 claim files and underwriting files related to the underlying liabilities and policies; confidential
16 financial information; competitively sensitive proprietary information; information that any party
17 believes in good faith reflects trade secrets, or other non-public information that, if disclosed, could
18 damage an existing or potential customer, client, or investor relationship.

19 3. SCOPE

20 The protections conferred by this Order cover not only Confidential Material (as defined
21 above), but also (1) any information copied or extracted from Confidential Material; (2) all copies,
22 excerpts, summaries, or compilations of Confidential Material; and (3) any testimony,
23 conversations, or presentations by parties or their counsel that might reveal Confidential Material.

24 However, the protections conferred by this Order do not cover information that is in the
25 public domain or becomes part of the public domain through trial or otherwise.

26 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

1 4.1 Basic Principles. A receiving party may use Confidential Material that is disclosed
2 or produced by another party or by a non-party in connection with this case only for prosecuting,
3 defending, or attempting to settle this litigation. Confidential Material may be disclosed only to
4 the categories of persons and under the conditions described in this Order. Confidential Material
5 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
6 that access is limited to the persons authorized under this Order.

7 4.2 Disclosure of Confidential Material. Unless otherwise ordered by the Court or
8 permitted in writing by the designating party, a receiving party may disclose any Confidential
9 Material only to:

10 (a) the receiving party's counsel of record in this action, as well as employees
11 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

12 (b) the officers, directors, and employees (including in house counsel) of the
13 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
14 agree that a particular document or material produced is for Attorney's Eyes Only and is so
15 designated;

16 (c) experts and consultants to whom disclosure is reasonably necessary for this
17 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

18 (d) the Court, court personnel, and court reporters and their staff;

19 (e) copy or imaging services retained by counsel to assist in the duplication of
20 Confidential Material, provided that counsel for the party retaining the copy or imaging service
21 instructs the service not to disclose any Confidential Material to third parties and to immediately
22 return all originals and copies of any Confidential Material;

23 (f) during their depositions, witnesses in the action to whom disclosure is
24 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
25 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages of
26 transcribed deposition testimony or exhibits to depositions that reveal Confidential Material must

1 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
2 under this Order and the front page of the deposition transcript shall include the disclaims,
3 “Contains Confidential Material Subject to Protective Order”;

4 (g) the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information;

6 (h) The receiving party’s reinsurers, retrocessionaires, regulators, or
7 government agencies to whom reporting obligations are owed, and the receiving party’s auditor’s
8 and accountants.

9 4.3 Filing Confidential Material. Before filing Confidential Material or discussing or
10 referencing such material in court filings, the filing party shall confer with the designating party,
11 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
12 remove the Confidential Material designation, whether the document can be redacted, or whether
13 a motion to seal or stipulation and proposed order is warranted. During the meet and confer
14 process, the designating party must identify the basis for sealing the specific Confidential Material
15 at issue, and the filing party shall include this basis in its motion to seal, along with any objection
16 to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
17 followed and the standards that will be applied when a party seeks permission from the court to
18 file material under seal. A party who seeks to maintain the confidentiality of its information must
19 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion
20 to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in
21 accordance with the strong presumption of public access to the Court’s files.

22 5. DESIGNATING CONFIDENTIAL MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Confidential Material for Protection.
24 Each party or non-party that designates information or items for protection under this Order must
25 take care to limit any such designation to specific material that qualifies under the appropriate
26 standards. The designating party must designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify, so that other portions of the
2 material, documents, items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
5 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
6 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
7 and burdens on other parties) expose the designating party to sanctions.

8 If it comes to a designating party's attention that information or items that it designated for
9 protection do not qualify for protection, the designating party must promptly notify all other parties
10 that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
12 (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or ordered,
13 disclosure of discovery material that qualifies for protection under this Order must be clearly so
14 designated before or when the material is disclosed or produced.

15 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
16 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
17 the designating party must affix the word "CONFIDENTIAL" to each page that contains
18 Confidential Material. If only a portion or portions of the material on a page qualify for protection,
19 the designating party also must clearly identify the protected portion(s) (*e.g.*, by making
20 appropriate markings in the margins).

21 (b) Testimony given in deposition or in other pretrial proceedings: the parties
22 and any participating non-parties must identify on the record, during the deposition or other pretrial
23 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
24 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
25 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
26 exhibits thereto, as Confidential Material. If a party or non-party desires to protect Confidential

1 Material at trial, the issue should be addressed during the pre-trial conference.

2 (c) Other tangible items: the designating party must affix in a prominent place
3 on the exterior of the container or containers in which the information or item is stored the word
4 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
5 the designating party, to the extent practicable, shall identify the protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
7 designate qualified information or items does not, standing alone, waive the designating party’s
8 right to secure protection under this Order for such material. Upon timely correction of a
9 designation, the receiving party must make reasonable efforts to ensure that the material is treated
10 in accordance with the provisions of this Order.

11 6. CHALLENGING CONFIDENTIAL MATERIAL DESIGNATIONS

12 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
13 Confidential Material at any time. Unless a prompt challenge to a designating party’s Confidential
14 Material designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
15 economic burdens, or a significant disruption or delay of the litigation, a party does not waive its
16 right to challenge a Confidential Material designation by electing not to mount a challenge
17 promptly after the original designation is disclosed.

18 6.2 Meet and Confer. The parties must first make every attempt to resolve any dispute
19 regarding Confidential Material designations without court involvement. Any motion regarding
20 Confidential Material designations or for a protective order must include a certification, in the
21 motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
22 conference with other affected parties in an effort to resolve the dispute without court action. The
23 certification must list the date, manner, and participants to the conference. A good faith effort to
24 confer requires a face-to-face meeting or a telephone conference.

25 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
26 intervention, the designating party may file and serve a motion to retain confidentiality under Local

Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the Court rules on the challenge.

7. CONFIDENTIAL MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as Confidential Material that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose Confidential Material may be affected.

8. UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential Material to any person or in any circumstance not authorized under this Order, the receiving party must immediately: (a) notify in writing the designating party of the unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized copies of the Confidential Material; (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order; and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 CONFIDENTIAL MATERIAL

3 When a designating party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
6 is not intended to modify whatever procedure may be established in an e-discovery order or
7 agreement that provides for production without prior privilege review. The parties agree to the
8 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each receiving
11 party may return all Confidential Material to the designating party, including all copies, extracts
12 and summaries thereof. In the alternative, the receiving party may keep the Confidential Material
13 in its possession, if the receiving party agrees to abide by the terms of this Order going forward
14 after the dismissal of this action or entry of a final judgment, not subject to further appeal.

15 Notwithstanding this provision, counsel are entitled to retain archival copies of all
16 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
17 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
18 product, even if such materials contain Confidential Material.

19 The confidentiality obligations imposed by this Order shall remain in effect until a
20 designating party agrees otherwise in writing or the Court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: February 28, 2025

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the designating party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party.

DATED this 28th day of February, 2025



Tiffany M. Cartwright
United States District Judge